

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TERRY PADY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION No. H-06-2940
	§	
QUALA SYSTEMS, INC. d/b/a	§	
QUALAWASH,	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER

Pending is Defendant Quala System Inc.'s Motion for Summary Judgment (Document No. 18). After carefully considering the motion, response, and supplement thereto, the Court concludes that the motion should be denied.

Defendant, citing excerpts from Plaintiff Terry Pady's deposition, contends that Plaintiff cannot establish several of the essential elements of his premises liability claim. Additional summary judgment evidence has also been filed since Defendant filed its motion. To prevail on a premises liability claim under Texas law, a plaintiff must prove: (1) the defendant had actual or constructive knowledge of the condition(s) on its premises; (2) the condition posed an unreasonable risk of harm; (3) the defendant failed to exercise reasonable care in reducing or eliminating the risk; and (4) the defendant's failure proximately caused injury to plaintiff. See LMB, Ltd. v. Moreno, 201 S.W.3d 686, 688 (Tex. 2006). After carefully reviewing the record, and viewing the

evidence in the light most favorable to Plaintiff, the Court finds that Plaintiff has presented sufficient summary judgment evidence to raise a genuine issues of material fact on each of the essential elements of his case. Accordingly, it is

ORDERED that Defendant QualaWash System, Inc., d/b/a QualaWash's Motion for Summary Judgment (Document No. 18) is DENIED.

The Clerk will enter this Order, providing a correct copy to all counsel of record.

SIGNED in Houston, Texas, on this 14th day of January, 2008.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE